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9 **IN THE SUPREME COURT**  
10 **STATE OF ARIZONA**  
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12  
13 PETITION TO AMEND RULE  
14 55(a)(1), ARIZONA RULES OF  
15 CIVIL PROCEDURE  
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Supreme Court No. R-10-\_\_\_\_\_

17 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar  
18 of Arizona hereby petitions the Supreme Court to amend Rule 55(a)(1) of the  
19 Arizona Rules of Civil Procedure to clarify that applications for entry of default  
20 must be served on *all* parties, not just the parties against whom default is sought.  
21 The current wording of Rule 55(a)(1) conveys the mistaken impression that only  
22 certain parties must be served with such applications, too often leading  
23 practitioners not to serve the other parties to an action with a copy of those  
24 applications. The State Bar believes that this problem can be rectified by adding  
25 an additional subsection to Rule 55(a) (shown in Appendix A) reminding the  
26 party seeking a default to serve a copy of the default application on all parties who  
have appeared in a case.

**Discussion**

Rule 55(a) of the Arizona Rules of Civil Procedure sets forth the procedure  
for making an application to the clerk for entry of default against a party.

1 Pursuant to Rule 5(a) of the Arizona Rules of Civil Procedure, the applicant is  
2 required to serve a copy of the application on all parties who have appeared in the  
3 action. *See* Ariz. R. Civ. P. 5(a) (“every written motion other than one which may  
4 be heard ex parte, and every written notice, . . . demand, . . . and similar paper  
5 shall be served upon each of the parties”).

6 Despite Rule 5(a)’s clarity, parties applying for entry of default under  
7 Rule 55(a) often fail to send copies of the default papers to the other parties in an  
8 action. The State Bar believes this may be the result of the language of  
9 Rule 55(a)(1), which painstakingly lists those who are to receive notice on behalf  
10 of the party in default. The obvious intent of the Rule is to ensure that any  
11 attorney who may be representing that party receives notice, even if that attorney  
12 has not made a formal appearance in the matter. Rule 55(a)(1) states:

13 1) *Notice.*

14 (i) To the Party. When the whereabouts of the party  
15 claimed to be in default are known by the party requesting the entry  
16 of default, a copy of the application for entry of default shall be  
mailed to the party claimed to be in default.

17 (ii) Represented Party. When a party claimed to be in  
18 default is known by the party requesting the entry of default to be  
19 represented by an attorney, whether or not that attorney has formally  
20 appeared, a copy of the application shall also be sent to the attorney  
21 for the party claimed to be in default. Nothing herein shall be  
22 construed to create any obligation to undertake any affirmative effort  
to determine the existence or identity of counsel representing the  
party claimed to be in default.

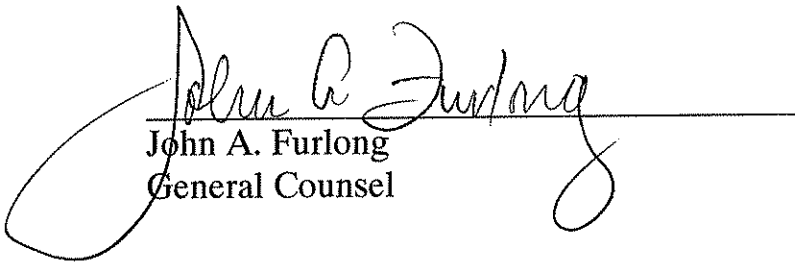
23 (iii) Whereabouts of Unrepresented Party Unknown. If the  
24 whereabouts of a party claimed to be in default are unknown to the  
25 party requesting the entry of default and the identity of counsel for  
26 that party is also not known to the requesting party, the application  
for entry of default shall so state.

1 The State Bar believes that the specificity of this language sometimes leads  
2 practitioners and their staffs to overlook the general requirement of Rule 5 to  
3 serve these default papers on the other parties who have appeared in the action.  
4 Given the rule's detail, it is not hard to imagine a practitioner or staff member  
5 thinking that Rule 55(a)(1) provides a complete list of everyone entitled to receive  
6 notice of the application for entry of default.

7 To rectify this problem, the State Bar proposes an amendment to  
8 Rule 55(a)(1) to remind practitioners that the specific service requirements in  
9 Rule 55(a)(1) are *in addition to* the service requirements of Rule 5, *not in lieu of*  
10 the requirements of Rule 5. Specifically, the State Bar suggests that a section be  
11 added to the end of Rule 55(a)(1) as follows: "(iv) Other Parties. Nothing in this  
12 Rule is to be construed to relieve a party requesting entry of default from the  
13 service requirements of Rule 5(a) as to other parties who have appeared in the  
14 action."

15 The State Bar believes that this minor revision to Rule 55 will avoid the  
16 problems caused by the current wording of Rule 55 that may be leading attorneys  
17 and their staffs to fail to serve a copy of default papers on the other parties who  
18 have appeared in the lawsuit. The State Bar therefore requests that this Court  
19 amend Rule 55 as detailed in Appendix A to this petition.

20 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of NOVEMBER, 2010.

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John A. Furlong  
General Counsel

1 Electronic copy filed with the Clerk  
2 of the Supreme Court of Arizona  
3 this 27<sup>th</sup> day of November, 2010.

4 By: Kathleen A. Lundgren  
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## **APPENDIX A**

### **Rule 55(a). Application and entry**

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the clerk shall enter that party's default in accordance with the procedures set forth below. All requests for entry of default shall be by written application to the clerk of the court in which the matter is pending.

(1) *Notice.*

(i) To the Party. When the whereabouts of the party claimed to be in default are known by the party requesting the entry of default, a copy of the application for entry of default shall be mailed to the party claimed to be in default.

(ii) Represented Party. When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of the application shall also be sent to the attorney for the party claimed to be in default. Nothing herein shall be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

(iii) Whereabouts of Unrepresented Party Unknown. If the whereabouts of a party claimed to be in default are unknown to the party requesting the entry of default and the identity of counsel for that party is also not known to the requesting party, the application for entry of default shall so state.

(iv) Other Parties. Nothing in this Rule is to be construed to relieve a party requesting entry of default from the service requirements of Rule 5(a) as to other parties who have appeared in the action.